IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9102 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHKUMAR ANCHLANAND RATHI

Versus

COMMISSIONER

Appearance:

1. Special Civil Application No. 9102 of 2002

PARTY-IN-PERSON for Petitioner No. 1

MR SOMPURA, Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 01/10/2002

ORAL JUDGEMENT

1. Rule. Mr.Sompura, learned AGP waives service of notice of rule on behalf of the respondents.

2. The only contention raised in this petition is that the permission to open class of XIth standard was granted as per the letter dated 11-6-2002 and it has been contended in the petition that the opportunity of hearing has not been given before cancelling the said permission as per the order dated 6-7-2002 and the said order is under challenge in this petition.

3. Mr.Sompura, learned AGP is not in a position to dispute regarding not giving of the opportunity of hearing and, therefore, it is clear that the order has been passed without giving any opportunity of hearing to the management of the school. When this Court had passed the order on 13-9-2002, Mr.Dinesh A. Rathi appearing as party-in-person had stated that until the question of cancellation of permission is finalised, no students will be granted admission in XIth standard Science Stream pursuant to the permission which is cancelled.

4. In view of the above and the facts and circumstances of the case, I am of the view that the order dated 6-7-2002 deserves to be quashed only on the ground of breach of principles of natural justice.

5. Mr.Dinesh A. Rathi, who is personally present in the Court also states that until the hearing is given or the question of cancellation of permission is finally decided, new students in XIth standard Science Stream will not be admitted.

6. In view of the above, the order dated 6-7-2002 Annexure "A" is quashed and set aside. However, the respondent No.1 i.e. Commissioner, Madhyan Bhojan Yojana and Schools, shall give an opportunity of hearing to the petitioner, and if required formal notice for the said purpose shall also be issued within a period of one month from today. Thereafter, the petitioner will be at liberty to make submissions in response to the aforesaid notice and after giving opportunity to the petitioner, the decision shall be taken by the Commissioner within a period of two months from today. It is also made clear that until the decision is taken by respondent No.1 as recorded above, the petitioner shall not admit any new student in XIth standard as per the statement made before this Court. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

1-10-2002 (Jayant Patel, J.)

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